

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

WILLIAM H. STOLLER, an individual	)	
and trustee of the William H. Stoller	)	
Trust, for himself and derivatively on	)	
behalf of Express Services, Inc., a	)	
nominal defendant,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CIV-11-294-C
	)	
ROBERT A. FUNK, an individual and	)	
trustee of the Robert A. Funk Trust,	)	
the ROBERT A. FUNK TRUST,	)	
ROBERT E. FELLINGER, and	)	
JERI CRAIG, individuals, and EXPRESS	)	
SERVICES, INC., a Colorado corporation,	)	
nominal defendant,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

Plaintiff has filed a Motion to Compel, seeking disclosure of communications between ESI and Defendants Fellingner, Funk, and Craig. According to Plaintiff, these Defendants have refused to disclose communications, relying on the joint defense/common interest theory discussed herein. As set forth in the Court's Order resolving Defendant Fellingner's Motion to Compel in Case No. CIV-11-1144, Defendants have failed to come forward with factual evidence on which to base their claim of joint or common defense. While they have provided some legal argument on the topic, they have failed to apply that law to the facts in a manner from which the Court can find the doctrine applicable. Thus, to the extent Defendants are refusing to answer deposition questions or produce discovery on the basis of

the joint defense/common interest doctrine, that objection is overruled. However, Defendants and ESI point out that there are other problems with Plaintiff's discovery, such as its breadth ("all communications") and the fact that certain of the documents may be consistent with the Court's rulings herein, subject to attorney-client privilege and/or work-product protection. Additionally, the fact that Plaintiff's motion<sup>\*</sup> seeks "all communications" without any temporal or functional limitation makes the motion overbroad.

For the reasons set forth herein, Plaintiff's Motion to Compel Discovery of Defendants' Communications with Express Services, Inc. (Dkt. No. 106) is GRANTED in part, consistent with the rulings herein.

IT IS SO ORDERED this 1st day of October, 2013.

  
ROBIN J. CAUTHRON  
United States District Judge

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<sup>\*</sup> It may be that the actual discovery requests are more limited. However, those requests were not provided. Certainly, the language of Plaintiff's motion is overly broad.